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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 ELIO DIEGUEZ FRIAS, a/k/a Carlos Diaz,

10 Plaintiff,

11 v.

12 DARRYL TAYLOR, *et al.*,

13 Defendants.

Case No. C14-1690-JCC-JPD

REPORT AND RECOMMENDATION

14 INTRODUCTION AND SUMMARY CONCLUSION

15 This is a *pro se* civil action filed by King County prisoner Elio Frias. Plaintiff has been
16 granted leave to proceed with this action *in forma pauperis*. Service has not been ordered. This
17 Court, having reviewed plaintiff's complaint, and the balance of the record, concludes that
18 plaintiff has failed to state a cognizable ground for relief in this action. This Court therefore
19 recommends that plaintiff's complaint and this action be dismissed, without prejudice, pursuant
20 to 28 U.S.C. § 1915(e)(2)(B).

21 DISCUSSION

22 On November 3, 2014, plaintiff presented to this Court for filing a civil rights complaint
23 under 42 U.S.C. § 1983 in which he asserted that he was assaulted and seriously injured by a

1 King County Metro Transit driver in March 2013. (*See* Dkt. 1-1.) Plaintiff claimed that he
2 boarded a Metro Transit bus on March 12, 2013 and the driver began to argue with him because
3 he was “a little inebriated.” (*Id.* at 3.) The driver told plaintiff he wanted him off the bus, but
4 plaintiff refused and requested that the police be called. (*Id.*) Plaintiff asserted that rather than
5 call the police, the bus driver threw him off the top steps of the bus and he landed on the
6 sidewalk where he hit his head on the concrete and passed out. (*Id.*) Plaintiff stated that he
7 woke up a few days later at Harborview Medical Center where he was being treated for a
8 subdural hematoma. (*Id.*) Plaintiff identified Metro Transit driver Darryl Taylor, Seattle City
9 Hall, and King County Metro Transit as defendants in his complaint. (*Id.* at 1.) Plaintiff
10 requested compensatory damages in the amount of \$2,000, and punitive damages in the amount
11 of \$2,000,000.

12 After reviewing plaintiff’s complaint, this Court determined that plaintiff had not stated a
13 cognizable ground for relief under § 1983 and, thus, the Court issued an Order directing plaintiff
14 to show cause why this action should not be dismissed. (Dkt. 8.) Plaintiff was advised in the
15 Order to Show Cause that in order to sustain a civil rights action under § 1983, a plaintiff must
16 show (1) that he suffered a violation of rights protected by the Constitution or created by federal
17 statute, and (2) that the violation was proximately caused by a person acting under color of state
18 or federal law. *See Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). The Court noted
19 that plaintiff had not identified in his complaint the federal constitutional right he believed was
20 violated by the conduct of the named defendants, and that the facts alleged in the complaint did
21 not suggest that any of the named defendants had caused plaintiff harm of federal constitutional
22 dimension. The Court further noted that plaintiff’s claim that he was assaulted by a Metro
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1 Transit driver implicated state tort law, rather than federal constitutional law, and that such
2 claims could not be pursued independently in an action brought under § 1983.

3 Plaintiff filed a timely response to the Order to Show Cause on December 9, 2014
4 together with a motion seeking leave to amend his complaint. (Dkts. 9 and 10.) Plaintiff
5 indicates in his response that he did not intend to proceed with this action under § 1983, he
6 merely filled out the form provided to him by the Clerk of Court. Plaintiff states that his
7 intention has always been to proceed under tort law and, in the proposed amended complaint
8 contained within plaintiff's motion to amend, he specifically asserts jurisdiction under the
9 Washington Tort Claim Act. (*See* Dkt. 9 at 3-4, Dkt. 10 at 3.)

10 Plaintiff's response to this Court's Order to Show Cause, together with his proposed
11 amended complaint, make clear that this Court lacks jurisdiction over the claim plaintiff intends
12 to assert in this action. Because plaintiff asserts a claim arising under state law rather than
13 federal law, this Court would have jurisdiction over plaintiff's claim only if he could establish
14 diversity of citizenship between the parties. *See* 28 U.S.C. §§ 1331, 1332. It is clear from
15 plaintiff's submissions that all proposed parties to this action either reside in, or are otherwise
16 located in, the State of Washington and, thus, that there is no diversity of citizenship between the
17 parties. Accordingly, this Court lacks jurisdiction over plaintiff's claim.

18 CONCLUSION

19 As plaintiff has not alleged in his original complaint or in his proposed amended
20 complaint any claim over which this Court has jurisdiction, the undersigned recommends that
21 plaintiff's complaint and this action be dismissed without prejudice, prior to service, under
22 § 1915(e)(2)(B). This Court further recommends that plaintiff's motion for leave to amend be
23 stricken as moot. A proposed order accompanies this Report and Recommendation.

